A **KORIAH SUDAR**

v.

PENTADBIR TANAH KUALA LANGAT

B COURT OF APPEAL, PUTRAJAYA
AZAHAR MOHAMED JCA
LIM YEE LAN JCA
MOHD ZAWAWI SALLEH JCA
[CIVIL APPEAL NO: B-01-238-2011]
C 8 MARCH 2013

CIVIL PROCEDURE: *Appeal - Decision of trial judge - Land acquisition - Whether statute expressly precludes appellant from appealing - Whether right to appeal a creature of statute - Whether appeal*
D *maintainable - Land Acquisition Act 1960, s. 40D - Courts of Judicature Act 1964, s. 69(1)(d)*

LAND LAW: *Acquisition of land - Compensation - Appeal against decision of High Court - Whether statute expressly precludes appellant from appealing - Whether appeal maintainable - Land Acquisition Act*
E *1960, s. 40D - Courts of Judicature Act 1964, s. 69(1)(d)*

LAND LAW: *Acquisition of land - Compensation - Late payment charges - Appeal against decision of High Court - Interest payable on additional compensation awarded - Failure of trial judge to order payment*
F *of interest - Whether trial judge erred in his decision - Land Acquisition Act 1960, s. 48*

This was the appellant's appeal against the decision of the learned Judicial Commissioner ('JC') in relation to the adequacy of the amount of compensation awarded towards the appellant's land
G under the Land Acquisition Act 1960 ('the Act'). The respondent contended that this appeal was not maintainable by reason of the express provision under s. 40D of the Act. Further, it was the appellant's contention that the learned JC erred when he did not direct the interest of 8% per annum to be paid on the additional
H compensation awarded pursuant to s. 48 of the Act.

Held (allowing appeal in part)
Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

I **(1)** It is trite that there is no right of appeal against the decision of a court of competent jurisdiction unless the right is expressly provided for. The right to appeal is a creature of statute and it cannot be given by mere implication. (para 18)

(2) Under s. 40D of the Act, the appellant was precluded from appealing against the order of compensation given by the learned JC who sat with the aid of the two assessors. Further, this appeal was not maintainable by reason of the express provision in s. 68(1)(d) of the Courts of Judicature Act 1964 ('CJA'). (paras 14, 15 & 16)

(3) Section 40D of the Act and s. 68(1)(d) of the CJA are very clear and effect must be given to the unambiguously expressed intent of these sections. Hence, the appeal on quantum was dismissed. (paras 17 & 21)

(4) The learned JC erred in law by not directing the interest of 8% per annum which was to be paid on the additional compensation award as the land was possessed by the respondent in October 2000. There was a delay of more that twelve years. Hence, it was ordered that the interest of 8% per annum was to be paid on the sum of RM43,610 being the additional compensation awarded by the learned JC from 5 October 2000, *ie*, the date of issuance of the "Borang K" to 11 July 2012, *ie*, the date where the sum of RM43,610 was credited into the appellant's solicitors client's account. (s. 48 of the Land Acquisition Act 1960). (paras 22, 23 & 24)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan perayu terhadap keputusan yang arif Pesuruhjaya Kehakiman ('PK') berkenaan jumlah pampasan yang diawardkan untuk tanah perayu di bawah Akta Pengambilan Tanah 1960 ('Akta'). Responden berhujah bahawa rayuan ini tidak boleh bertahan disebabkan peruntukan ekspres di bawah s. 40D Akta. Tambahan, adalah hujahan perayu bahawa yang arif PK khilaf apabila beliau tidak memerintahkan faedah sebanyak 8% setahun untuk dibayar atas pampasan tambahan berdasarkan s. 48 Akta.

Diputuskan (membenarkan sebahagian daripada rayuan) Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Adalah matan bahawa tidak terdapatnya hak untuk merayu terhadap keputusan mahkamah yang mempunyai bidang kuasa kompeten kecuali jika hak tersebut disediakan secara ekspres. Kebenaran merayu merupakan ciptaan statut dan ia tidak boleh diberi secara implikasi semata-mata.

(2) Di bawah s. 40D Akta, perayu dikecualikan daripada merayu terhadap perintah untuk pampasan yang diberi oleh yang arif PK yang dibantu oleh dua orang penilai. Tambahan, rayuan ini tidak boleh bertahan disebabkan peruntukan ekspres di dalam s. 68(1)(d) Akta Mahkamah Kehakiman 1964 ('AMK').

(3) Seksyen 40D Akta dan s. 68(1)(d) AMK adalah jelas dan kesannya mesti diberi kepada kehendak ekspres yang jelas dinyatakan dalam seksyen tersebut. Oleh itu, rayuan terhadap kuantum ditolak.

(4) Yang arif PK khilaf dari segi undang-undang apabila beliau tidak mengarahkan faedah sebanyak 8% setahun untuk dibayar terhadap pampasan award tambahan memandangkan tanah tersebut telah dimiliki oleh responden sejak Oktober 2000. Terdapat kelewatan sebanyak dua belas tahun. Oleh itu, ia diperintahkan bahawa faedah 8% setahun hendaklah dibayar atas jumlah RM43,610 yang merupakan pampasan tambahan yang diawardkan oleh yang arif PK dari 5 Oktober 2000, iaitu dari tarikh pengeluaran Borang K sehingga 11 Julai 2012, iaitu tarikh di mana jumlah RM43,610 telah dikredit ke dalam akaun peguamcara perayu (s. 48 Akta Pengambilan Tanah 1960).

Case(s) referred to:

Bukit Mertajam & Anor [2001] 1 CLJ 1 CA ***(refd)***

Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang [2011] 5 CLJ 125 FC ***(refd)***

Dr Koay Cheng Boon v. Majlis Perubatan Malaysia [2012] 4 CLJ 445 FC ***(refd)***

Dupont Steels Ltd v. Sirs [1980] 1 WLR 142 ***(refd)***

Gurdev Kaur Bhag Singh v. BSN Commercial Bank (M) Bhd [2003] 1 CLJ 429 CA ***(refd)***

Jitender Singh Pagar Singh & Ors v. Pentadbir Tanah Wilayah Persekutuan & Another Appeal [2012] 2 CLJ 165 CA ***(refd)***

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal [2001] 2 CLJ 525 FC ***(refd)***

Leong Kam Hoong v. Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam & Another Appeal [2001] 1 CLJ 1 CA ***(dist)***

Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim [2008] 5 CLJ 201 FC ***(refd)***

The Co-operative Central Bank Ltd v. Feyen Development Sdn Bhd [1997] 3 CLJ 365 FC ***(refd)***

Legislation referred to:
Land Acquisition Act 1960, ss. 8, 12, 38, 40A, 40B, 40C, 40D(1), (2), (3), 48
Courts of Judicature Act 1964, s. 68(1)(d)

For the appellant - Lim Yew Hock; M/s Yew Hock & Loh
For the respondent - Md Azhari Abu Hanif; Office State Legal Adviser, Selangor

[Appeal from High Court, Shah Alam; Civil Application No: MTS-15-325-2003]

Reported by Kumitha Abd Majid

JUDGMENT

Mohd Zawawi Salleh JCA:

[1] This appeal was in respect of a land acquisition matter and was against the decision of the learned Judicial Commissioner ("learned JC") who had on 28 February 2011 made the following award:

Total land area acquired by respondent	:	1.576 hectares
Land area not affected by TNB's Rentis	:	0.330 hectares @ RM480,000 = RM158,400)
Land area affected by TNB's Rentis	:	1.246 hectares @ RM110,000 = RM137,060
Total compensation RM158,400 + RM137,060		= RM295,460
Less compensation paid by Land Administrator		– RM251,950
Additional Compensation Awarded		RM 43,610

[2] However, the learned JC did not direct interest of 8% per annum be paid on the additional compensation awarded pursuant to s. 48 of the Land Acquisition Act 1960 ("the Act").

[3] We heard the appeal on 14 November 2012 and at its conclusion, we allowed it in part, ie, the appeal on interest. We made no order as to costs. We now give our reasons for doing so.

Facts Of The Case

[4] The facts of the case may be shortly stated. The appellant's land, described as Lot 5403, P.M. 2403, Mukim of Tanjung Dua Belas, district of Kuala Langat, Selangor, was subjected to acquisition under the Land Acquisition Act 1960 ("the Act") for the purpose of a project known as "Project Pembinaan Jalan Masuk ke Project Santuari Tanah Lembah Paya Indah".

[5] The said land was gazetted for acquisition pursuant to s. 8 of the Act *vide* Warta Kerajaan Negeri Selangor gazette dated 30 March 2000. The land area to be acquired was 1.576 hectares (3189405 acres).

[6] The land administrator conducted an enquiry pursuant to s. 12 of the Act to determine the amount of the compensation payable to the appellant. At the conclusion of the enquiry, the land administrator awarded compensation in the amount of RM158,400 in respect of the land area not affected by TNB's rentis and RM93,400 in respect of the land area affected by TNB's rentis. RM39,000 was awarded as legal fees.

[7] On 16 June 2000, the appellant objected to the amount of compensation awarded by the land administrator by filing form N requesting the land administrator to refer the matter to the court for its determination pursuant to s. 38 of the Act.

[8] The learned JC heard the land reference with the aid of two assessors pursuant to s. 40A of the Act.

[9] In his judgment at pp. 5-6 of Rekod Rayuan Tambahan, the learned JC had this to say:

> 7. Kedua-dua pengapit iaitu Encik Raja Abdul Aziz Azlan dan Puan Iwati Mohamed Shariff telah meneliti kandungan laporan penilaian oleh pemohon dan juga JPPH setelah mendengar hujahan kedua-dua pihak, telah memutuskan bahawa bahagian nilaian tanah yang

tiada rentis sebanyak 0.3301 hektar atas kadar RM480,000 hektar, iaitu RM158,000 manakala bahagian tanah yang ada rentis dinilaikan sebanyak 1.246 hektar atas nilaian RM110,000 hektar iaitu 137,000, menjadikan nilai tanah keseluruhan yang diambil sebanyak RM295,000.

Ditolak pampasan/award yang diberikan oleh pejabat tanah sebanyak RM251,550, award tambahan sebanyak RM43,610.

8. Mahkamah telah merekodkan keputusan pengapit-pengapit yang dibuat secara consensus dan ditandatangani, menurut peruntukan s. 47 Akta Pengambilan Tanah 1960.

[10] Before us, Encik Lim Yew Hock, learned counsel for the appellant submitted that the learned JC had erred in law when his lordship took into consideration the presence of the rentis that were erected by a third party (TNB) and failed to follow the Court of Appeal's decision in *Leong Kam Hoong v. Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam & Another Appeal* [2001] 1 CLJ 1; [2000] 1 MLJ 186. In delivering the judgment of the court in the said case, Siti Norma Yaacob JCA (as Her Ladyship then was) had this to say:

We agree with the appellant's contention as we consider it to be unjust and unconscionable that they deprived of the full value of their lands by the presence of the rentis that were erected by a third party. In any event if Tenaga Electric Nasional had wanted the land permanently, it could, under s. 55(3) and (4) of the Electricity Act 1949, have requested the state authority to acquire that portion of land and compensation would have to be paid to the landowners under the Act without due regard to the overhead rentis. Likewise the appellants should be accorded the same consideration and treatment and Lot 787 valued without regard to the overhead rentis.

[11] Learned counsel for the appellant further submitted that the High Court was bound to follow the decision of Court of Appeal based on the doctrine of *stare decisis*. In support of his submission, learned counsel relied upon the following cases:

(i) *The Co-operative Central Bank Ltd v. Feyen Development Sdn Bhd* [1997] 3 CLJ 365; [1997] 2 MLJ 829; and

(ii) *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525; [2001] 2 MLJ 417.

[12] On the other hand, Encik Md Azhari Abu Hanif, learned Assistant State Legal Advisor appearing for the respondent argued that this appeal was not maintainable by reason of the express provision in s. 40D of the Act.

[13] We were in full agreement with the submission of the learned Assistant State Legal Advisor. There was no doubt that the real issue in this appeal was quantum. During the hearing of the appeal, most of the points advanced by learned counsel for the appellant revolved around the adequacy of the compensation awarded by the learned JC. According to learned counsel for the appellant, the correct calculation would be as follows:

Total land area acquired by respondent	:	1.576 hectares
Market value as decided by the assessor @ RM480,000 per hectare		
Total compensation 1.576 x RM480,000	=	RM756,480
Less compensation paid by Land Administrator	–	RM251,850
Less payment	–	RM 43,610
		RM461,020

[14] Now, s. 40D(1), (2) and (3) of the Act states as follows:

Decision of the court on compensation

40D (1) In a case before the court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.

(2) Where the assessors have each arrived at a decision which differs from each other than the judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.

(3) Any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

[15] There was a plethora of judicial authorities to the effect that the appellant was precluded from appealing against the order of compensation given by the learned JC who sat with the aid of two assessors under s. 40D of the Act. To name but a few, are as follows:

(i) *Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125; and

(ii) *Jitender Singh Pagar Singh & Ors v. Pentadbir Tanah Wilayah Persekutuan & Another Appeal* [2012] 2 CLJ 165.

[16] We were also of the considered opinion that this appeal was not maintainable by reason of express provision in s. 68(1)(d) of the Courts of Judicature Act 1964 which provides as follows:

> **Non appealable matter.**
>
> 68(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

[17] Section 40D of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 are very clear and we must give effect to the unambiguously expressed intent of these sections. In the case of *Dupont Steels Ltd v. Sirs* [1980] 1 WLR 142, Lord Diplock had this to say:

> Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider that the consequences of doing so would be inexpedient or even unjust or immoral.

[18] It is trite that there is no right of appeal against the decision of a court of competent jurisdiction unless the right is expressly provided for. The right to appeal is a creature of statute. It cannot be given by mere implication. (See *Gurdev Kaur Bhag Singh v. BSN Commercial Bank (M) Bhd* [2003] 1 CLJ 429; *Dr Koay Cheng Boon v. Majlis Perubatan Malaysia* [2012] 4 CLJ 445 (FC); *Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim* [2008] 5 CLJ 201.

[19] The Act, being a special legislation, setting out a self contained code, the general law on appeals is therefore impliedly excluded.

[20] It is also pertinent to note that *Leong Kam Hong v. Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam & Another Appeal (supra)* was decided before Act A999, which *inter alia*, inserted ss. 40A, 40B, 40C and 40D. These new provisions came into force on 1 March 1998.

[21] For the above reasons, the appeal on quantum was dismissed.

[22] Learned counsel for the appellant further argued that the learned JC had erred in law in not directing interest of 8% per annum be paid on the additional compensation awarded. We agreed with the submission. Section 48 of the Act provides as follows:

> **48. Land Administrator may be required to pay late payment charges**
>
> If the sum which in the opinion of the court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the court may direct that the Land Administrator shall pay late payment charges on such excess at the rate of eight per cent per annum from the date on which the Land Administrator took possession of the land to the date of payment of such excess to the court or to the person interested.

[23] We were of the considered opinion that the learned JC erred in not directing interest to be paid on the additional award ("late payment charges") as the land was possessed by the respondent in October 2000. It was a delay of more than 12 years.

[24] We accordingly ordered that interest at 8% per annum be paid on the sum of RM43,610, being the additional compensation awarded by the learned JC, from 5 October 2000 (date of the issuance of "Borang K") to 11 July 2012 (the date of the sum RM43,610 credited into the appellant's solicitors client's account).

Appeal allowed in part.